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8

9   UNITED STATES DISTRICT COURT

10   NORTHERN DISTRICT OF CALIFORNIA

11   SAN JOSE DIVISION

12

13   IN RE HIGH-TECH EMPLOYEE   Master Docket No. 11-CV-2509-LHK
     ANTITRUST LITIGATION
14   **NOTICE OF ERRATA REGARDING
                                           DECLARATION OF CHRISTINA BROWN
15   THIS DOCUMENT RELATES TO: (EXHIBIT 1) IN SUPPORT OF
                                           DEFENDANTS' OPPOSITION TO
16   ALL ACTIONS   PLAINTIFFS' MOTION FOR CLASS
                                           CERTIFICATION**
17
                                           Date: January 17, 2013
18   Time: 1:30 pm
                                           Courtroom: 8, 4th Floor
19   Judge: The Honorable Lucy H. Koh

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1

NOTICE OF ERRATA

2   On November 12, 2012, Defendants submitted the Declaration of Christina Brown

3   ("Brown Declaration") in Support of Defendants' Opposition to Plaintiffs' Motion for Class

4   Certification (Dkt. 215). Defendants inadvertently omitted pages 32, 45, 54, 109, 125, 207, 282,

5   and 297 from Exhibit 1 to the Brown Declaration, which consists of transcript excerpts from the

6   deposition of Dr. Edward Leamer that are cited in Defendants' Opposition to Plaintiffs' Motion

7   for Class Certification. These pages are attached hereto.[1]

8

9   Dated: January 16, 2013   O'MELVENY & MYERS LLP

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_____
[1] These pages do not include any portions of testimony that the parties have designated as confidential or sought to maintain under seal.

NOTICE OF ERRATA RE BROWN DECL. ISO
OPPOSITION TO CLASS CERTIFICATION
NO. 11-CV-2509-LHK

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28
                                                      NOTICE OF ERRATA RE BROWN DECL. ISO
                                       - 3 -   OPPOSITION TO CLASS CERTIFICATION
                                                       NO. 11-CV-2509-LHK

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Dated: January 16, 2013   MAYER BROWN LLP

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ATTESTATION: Pursuant to General Order 45, Part X-B, the filer attests that concurrence in

26

the filing of this document has been obtained from all signatories.

27

28

NOTICE OF ERRATA RE BROWN DECL. ISO
OPPOSITION TO CLASS CERTIFICATION
NO. 11-CV-2509-LHK

1   UNITED STATES DISTRICT COURT

2   NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

3

4   --------------------------

5   IN RE: HIGH-TECH EMPLOYEE)

6   ANTITRUST LITIGATION   ) No. 11-CV-2509-LHK

7   --------------------------

8

9   HIGHLY CONFIDENTIAL

10

11   VIDEOTAPED DEPOSITION OF EDWARD LEAMER

12   San Francisco, California

13   Friday, October 26, 2012

14   Volume I

15

16

17

18

19

20   Reported by:

21   ASHLEY SOEVYN

22   CSR No. 12019

23   Job No. 1545691

24

25   PAGES 1 - 476

                                          Page 1

1	a "yes" or "no."	08:29:56
2	MR. GLACKIN: He's trying to answer your	08:29:57
3	question, Mr. Pickett, okay.	08:29:58
4	MR. PICKETT: I asked a "yes" or "no."	08:29:59
5	Let's move on. We're going to have to go a second	08:30:01
6	day if this keeps going on like this.	08:30:05
7	Q. Let's go back and let me see if I can get a	08:30:08
8	clean record on a simple question. What --	08:30:11
9	(Cross-talking.)	08:30:14
10	A. Could you ask -- (Cross-talking.)	08:30:14
11	Q. What word -- (Cross-talking.)	08:30:14
12	A. Could you please ask a clearer question?	08:30:14
13	The clearer question is -- (Cross-talking.)	08:30:16
14	Q. No -- (Cross-talking.)	08:30:17
15	A. Do facts trump theory always? The --	08:30:17
16	answer to that question is no. So the answer to the	08:30:20
17	question do fact sometimes trump theory? The answer	08:30:24
18	is yes. So please tell me which question you have	08:30:28
19	in mind, and I'll answer "yes" or "no."	08:30:30
20	Q. In your expert opinion, Dr. Leamer, what	08:30:33
21	percentage are you confident class members were	08:30:36
22	undercompensated?	08:30:40
23	A. I -- I -- I reply the same way that I	08:30:45
24	replied before, which is my opinion is that most	08:30:48
25	members of each class were undercompensated.	08:30:50

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1   Q.   I would like you to turn please to figure 2   08:44:17

2 of your report, which is on page 10? This is a   08:44:21

3 depiction of the relationships of the alleged   08:44:38

4 agreements and the defendants. You would agree that   08:44:40

5 there are many, many more potential employers for   08:44:43

6 class members than these seven defendants, right?   08:44:45

7   A.   I would agree.   08:44:48

8   Q.   Both in and outside of Silicon Valley?   08:44:50

9   A.   I would agree.   08:44:53

10   Q.   And how many additional companies would you   08:44:54

11 have to add to account for all the potential   08:44:56

12 employers?   08:44:59

13   A.   I don't know.   08:45:00

14   Q.   Thousands?   08:45:00

15   A.   I don't know.   08:45:01

16   Q.   Ten?   08:45:03

17   A.   I don't know.   08:45:05

18   Q.   Have you looked at where the seven   08:45:06

19 defendants hire people from?   08:45:10

20   A.   Yes, I have.   08:45:11

21   Q.   Well, how many companies do they hire   08:45:12

22 from?   08:45:13

23   A.   I haven't -- the companies that they hire   08:45:14

24 from is not part of the database. To the extent   08:45:16

25 that they come from a defendant we know because the   08:45:19

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 1   would have been the same in the but-for world?        08:53:15

 2       A.   I don't have an opinion on that subject.     08:53:19

 3   It wasn't something that I was asked to study.        08:53:21

 4       Q.   Let me ask you to -- well, let me just ask   08:53:30

 5   you this question:  Have you looked at any relevant    08:53:31

 6   labor market?                                          08:53:34

 7       A.   Have I looked at a relevant labor market?    08:53:38

 8       Q.   Correct, in this case.                        08:53:40

 9       A.   Yeah, I've looked at the markets for the     08:53:42

10   employees of all these firms.                          08:53:47

11       Q.   What is the relevant labor market or          08:53:48

12   markets in this case?                                  08:53:52

13           MR. GLACKIN:  Objection, vague.                08:53:53

14           THE WITNESS:  Now, we need to perhaps go       08:53:54

15   down through the conceptual frameworks.  So the        08:53:56

16   two -- there are three conceptual frameworks that I    08:53:58

17   suggest that are appropriate to the circumstances.     08:54:01

18   BY MR. PICKETT:                                         08:54:03

19       Q.   If I could just remind you, I'm not asking    08:54:03

20   how you got to the conclusion, I'm asking you what     08:54:06

21   your conclusion is.                                     08:54:09

22           MR. GLACKIN:  He's trying to answer your       08:54:10

23   question.  You interrupted him again.                  08:54:12

24           THE WITNESS:  It's not a simple answer.        08:54:13

25   And my way of making it clear is to explore the        08:54:16
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1	occurring.	10:05:43
2	BY MR. PICKETT:	10:05:44
3	Q. And the process of price discovery and	10:05:44
4	internal equity was going on each and every day at	10:05:50
5	Adobe throughout the class period, wasn't it?	10:05:53
6	A. That's correct.	10:05:56
7	Q. And -- and that's true of every call from	10:05:56
8	each one of these other companies that would have	10:06:01
9	been calling in to Adobe employees, right?	10:06:04
10	A. Those calls all play a role in the price of	10:06:07
11	discovery, that's correct.	10:06:11
12	Q. So there's lots of price discovery going	10:06:12
13	on --	10:06:14
14	MR. GLACKIN: Objection.	10:06:15
15	THE WITNESS: -- of each of the seven	10:06:15
16	defendants.	10:06:17
17	MR. GLACKIN: Sorry. Objection,	10:06:17
18	mischaracterizes, vague, argumentative.	10:06:18
19	BY MR. PICKETT:	10:06:20
20	Q. During the class period.	10:06:20
21	A. Well, I think what you're trying to say is	10:06:22
22	that the absence of these cold calls would not have	10:06:25
23	had a material impact on the price of the discovery	10:06:29
24	process, and that's not a valid conclusion.	10:06:31
25	Q. It's a drop in the bucket, isn't it?	10:06:34

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1	And we would hire outside economists at	10:21:42
2	very high salaries, much higher than the people --	10:21:46
3	the internal people receiving. And it's a source of	10:21:49
4	annoyance on the part of the other economists. They	10:21:52
5	all recognized that their salaries are going to come	10:21:55
6	up as well. So a single outside offer at a high	10:21:58
7	level is going to have an impact on everybody in the	10:22:02
8	organization. It doesn't have to, but it could.	10:22:05
9	Q. So --	10:22:06
10	A. And I'm telling you it definitely did in	10:22:06
11	the case of the economics department.	10:22:08
12	Q. So was there an across-the-board increase	10:22:08
13	for UCLA faculty, while you were chairman of that	10:22:11
14	department?	10:22:17
15	A. I'm talking about economics, so --	10:22:18
16	Q. Could you answer the question, please?	10:22:20
17	A. You do not ask -- (Cross-talking.)	10:22:20
18	Q. (Cross-talking.) Was there an	10:22:20
19	across-the-board compensation increase for UCLA	10:22:21
20	faculty?	10:22:25
21	A. Every year there's an across-the-board	10:22:25
22	compensation increase for UCLA faculty.	10:22:27
23	Q. That was in response to cold calls?	10:22:28
24	A. It's in -- it is in response to competitive	10:22:31
25	pressure, yes. Meaning, that the university is	10:22:32

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1    structures across firms, but the sharing notion is a      12:22:01

2    strictly internal notion.                                 12:22:04

3         Q.   Did you test for coordination over time?        12:22:08

4         A.   No, because it's not material to the task       12:22:12

5    that I was assigned to carry out.                         12:22:14

6         Q.   In looking at whether class member salaries     12:22:16

7    moved together over time within their single              12:22:18

8    defendant, that's -- one of the steps -- part of the      12:22:22

9    second step in your opinion there's classified proof      12:22:28

10   of impact, correct?                                       12:22:31

11        A.   Second part of the --                           12:22:37

12        Q.   Go back to the beginning.  You posited a        12:22:39

13   two-step analysis that we started the deposition          12:22:42

14   with on paragraph 10.  Do you recall paragraph 10?        12:22:46

15   You're looking at it now.                                 12:23:00

16        A.   Yeah, these are the two -- two questions        12:23:00

17   that I was asked to explore.                              12:23:02

18        Q.   All right.  And I think your reasons are        12:23:04

19   the two-steps you need to take to get to your final       12:23:05

20   conclusion, correct?                                      12:23:09

21            MR. GLACKIN:  Objection to                       12:23:09

22   characterization.                                         12:23:10

23            THE WITNESS:  I wouldn't describe them as        12:23:11

24   steps.  They are two components, two tasks that I         12:23:14

25   was asked to carry out.                                   12:23:14
```

1	mind. I don't know if I should help you out on this	14:25:55
2	or not.	14:25:58
3	Q. What -- fine. I'll bite. What is your	14:25:59
4	definition of a not rigid --	14:26:04
5	A. I'm saying that I'm not so sure that I	14:26:04
6	should help you out. It seems like this should be	14:26:07
7	your job to articulate the question in a way that I	14:26:09
8	can sensibly answer it.	14:26:09
9	Q. Answer the question, please.	14:26:10
10	A. Can I hear the question again?	14:26:12
11	Q. What is your definition of a nonrigid wage	14:26:13
12	structure?	14:26:16
13	A. It's -- I told you that a -- a rigid wage	14:26:16
14	structure is one that in response to outside	14:26:20
15	pressure at a certain point in the -- in the	14:26:23
16	compensation design category that that outside	14:26:28
17	pressure that gives rise to higher wages is offset	14:26:32
18	by a sequence of reactions for all the other workers	14:26:36
19	within the firm, in order to keep internal equity in	14:26:40
20	place. So a nonrigid would -- pay structure would	14:26:43
21	be one that was indifferent to internal equity	14:26:46
22	issues.	14:26:52
23	Q. And so reflect no parallel compensation	14:26:54
24	over time --	14:26:59
25	MR. GLACKIN: Objection.	14:26:59

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1	The internal equity is more an apples to	14:56:26
2	apples comparison, to find somebody that you think	14:56:30
3	of, that's somebody or yourself, getting paid	14:56:35
4	substantially more at your own firm or substantially	14:56:36
5	more at another firm. Either way that makes you	14:56:38
6	disgruntled and unhappy at the job and become less	14:56:40
7	productive as a result.	14:56:44
8	Q. So internal equity -- the impacts of it are	14:56:44
9	concentrated in the particular job title, correct?	14:56:47
10	MR. GLACKIN: Objection, vague.	14:56:50
11	BY MR. PICKETT:	14:56:57
12	Q. In other words, the internal equity concept	14:56:57
13	doesn't carry over so that in-house counsel, and	14:56:58
14	sous chefs, and fab workers, and cafeteria workers,	14:57:02
15	all think that their relations need to be constant	14:57:05
16	over time, it's just within each of those	14:57:09
17	categories?	14:57:10
18	A. I -- I think that's wrong. I think it	14:57:11
19	extends very broadly across these firms.	14:57:11
20	Q. So you don't --	14:57:15
21	A. Inside the firms it extends very broadly.	14:57:15
22	Q. So the concept --	14:57:18
23	A. It's not -- it's not just within a title.	14:57:19
24	Q. Okay.	14:57:19
25	A. It's across titles as well.	14:57:20

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